

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

BETTER DAYS AHEAD	:	
OUTREACH, INC., et al.	:	
	:	
Plaintiffs,	:	No. 2:23-CV-04234
	:	
v.	:	JURY TRIAL DEMANDED
POTTSTOWN BOROUGH,	:	
	:	
Defendant.	:	
	:	

**BOROUGH OF POTTSTOWN'S MOTION TO DISMISS PLAINTIFFS'
SECOND AMENDED CLASS ACTION COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF PURSUANT TO F.R.C.P 12(b)(6)**

Defendant, Borough of Pottstown (“Pottstown”), by and through its undersigned counsel, Siana Law, LLP, hereby files this Motion to Dismiss Plaintiffs’ Second Amended Complaint pursuant to Federal Rule 12(b)(6), and in support thereof, avers as follows:

1. Plaintiffs Alfredo Beltran, Daniel Wanner, and Better Days Ahead Outreach, Inc., (“BDA”) commenced this action by filing a Complaint against Pottstown asserting violations of their Eighth and Fourteenth Amendment rights (State Created Danger), along with a Motion for Preliminary Injunction (ECF 4).
2. Following hearing on the Injunctive Relief, this Court granted in part and denied in part the relief requested. (ECF 25).
3. Pottstown filed a Motion for Clarification of the Order (ECF 27, 30); and appealed the Court’s Order regarding Injunctive Relief to the Third Circuit.
4. After the hearing, Plaintiffs filed a First Amended Complaint (ECF 28), asserting an Eighth Amendment violation only.

5. Pottstown filed a Motion to Dismiss Plaintiffs' First Amended Complaint. (ECF 31).

6. During the pendency of Defendant's Motion to Dismiss the First Amended Complaint, Plaintiffs moved to file a Second Amended Complaint, adding a Proposed Class Action Claim based on the Fourteenth Amendment right to travel, which the Court granted. (ECF 40, 41).

7. Plaintiffs filed the Second Amended Complaint ("SAC"), reasserting their Eighth Amendment claim, adding a class action claim based upon the Fourteenth Amendment right to intrastate travel. (ECF 44). (The class action does not relate to the initially filed Eighth Amendment).

8. Plaintiffs' Eighth Amendment Claims fail where this Circuit has failed to adopt any holdings permitting an Eight Amendment claim based upon the facts asserted; and the claim fails as a matter of law.

9. The Class Plaintiffs should be dismissed where they fail to comply with the elements of Rule 23, i.e. a lack of numerosity, commonality, typicality or adequacy of representation. See, F.R.C.P. 23.

10. Plaintiffs' Fourteenth Amendment Due Process Right to Travel Claim fails where *no ordinance* is at issue; and where this Circuit has not permitted an intrastate Right to Travel Claim based upon any circumstances similar to the facts asserted in the SAC.

11. To the extent that Plaintiffs assert a *Monell* claim, such claims are insufficiently pled and must be dismissed. See, F.R.C.P. 8; *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

12. As it relates to individual plaintiffs, BDA, an organization, lacks standing as to either the Eighth Amendment or Fourteenth Amendment claim.

13. Likewise, Beltran lacks standing as he no longer is an unhoused person within the Borough of Pottstown.

14. For the reasons set forth herein and in the accompanying Memorandum of Law, the Borough of Pottstown is entitled to dismissal, as a matter of law.

WHEREFORE, for the reasons set forth herein, and in the supporting Memorandum of Law, Pottstown requests that this Court grant its Motion to Dismiss and enter an Order in the proposed form of Order.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on this day a true and correct copy of Defendant Borough of Pottstown's Motion to Dismiss Plaintiffs' Second Amended Class Action Complaint for Declaratory and Injunctive Relief Pursuant to F.R.C.P. 12(b)(6) was served via ECF:

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Date: March 11, 2024

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